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**JUN 13 2019**

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**-SAN FRANCISCO DIVISION-**

**TSH**

**CV 19 80156 MISC**

IN RE EX PARTE APPLICATION OF  
DR. YUICHIRO YASUDA AND YU  
MENTAL CLINIC,

Case No.:

**EX PARTE APPLICATION FOR  
ORDER PURSUANT TO 28 U.S.C  
§1782 PERMITTING DISCOVERY  
FOR USE IN FOREIGN  
PROCEEDING AND MEMORANDUM  
AND DECLARATION IN SUPPORT  
THEREOF**

Applicants,

**TO THE HONORABLE COURT, TO DEFENDANTS AND TO ALL PARTIES  
WITH AN INTEREST HEREIN:**

CV 19-80156 TSH

1 Applicants, Dr. YUCHIRO YASUDA and YU MENTAL CLINIC  
2 (hereinafter referred to as “Dr. Yasuda” , “Yu Mental Clinic or collectively as  
3 “Applicant(s)”, a professional corporation, organized and existing under the laws  
4 of Japan, hereby apply to this Court ex parte for an order permitting discovery  
5 from Twitter (“Twitter”) for use in a court proceeding in Japan pursuant to 28  
6 U.S.C. § 1782.  
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8  
9 The proposed subpoena attached to this application seeks from Twitter  
10 information and documents relating to a certain Twitter account which certain  
11 anonymous tweets, which under Japanese law, constitute defamation, violation of  
12 right to privacy and unlawful interference with its business and reputation of  
13 against Dr. Yasuda and Yu Mental Clinic  
14

15 The application is supported by the accompanying declaration of Tomohiro  
16 Kanda, an attorney in Japan who represents Dr. Yasuda and Yu Mental Clinic, in  
17 connection with an anticipated lawsuit in Japan for the anonymous person(s) who  
18 tweeted the unlawful statements about Dr. Yasuda and Yu Mental Clinic, as will be  
19 detailed below.  
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23 **I. BACKGROUND**  
24

25 Dr. Yasuda is a psychiatrist and owner of Yu Mental Clinic in Ueno, Taito  
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1 Ku, Tokyo, since 2008. Dr. Yasuda graduated from University of Tokyo, school  
2 of medicine in 2000 and is a well-respected and well-known psychiatrist in Japan.  
3 (Decl. Kanda ¶ 4). Dr. Yasuda graduated from the School of Medicine, the  
4 University of Tokyo in 2000. Dr. Yasuda completed his residency at the following  
5 hospitals prior to opening Yu Mental Clinic: 1) 2001: Hatsuishi Hospital,  
6 Department of Psychiatry; 2) 2002-2006: Department of Psychiatry, Shounan  
7 Rehabilitation Hospital 2006-2008: Chiba, Kashiwa Rehabilitation Hospital,  
8 Department of Psychiatry; 2008: Opening of Yu Mental Clinic with 55 doctors, 70  
9 psychologists and 88 staff members, a total of 213 employees in total. (Decl.  
10 Kanda ¶ 4).

11 On January 26, 2019 at 12:12 a.m., an unknown individual, operating under  
12 the Twitter user name of @gefalleneren (hereinafter referred to as “Anonymous  
13 Defendant”), posted without permission, a picture of Dr. Yasuda and a woman and  
14 tweeted derogatory statements about Yu Mental Clinic and Dr. Yasuda. (Decl.  
15 Kanda ¶ 5). The tweet states under the picture “Yuuki Yu (Yuicchiro Yasuda)”  
16 was sued by a woman who was a former associate. It does not been clearly said  
17 that Yuuki Yu is sexually exploiting and the sexual toys of the charismatic  
18 psychiatrist are mass produced....” “#Defamation, #managed prostitution #sex  
19 crime #extortion #engagement scam #incapacitated rape”. (See Exhibit A  
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1 attached to Declaration of Tomohiro Kanda and Exhibit A-1 English translation of  
2 Exhibit A, attached to Declaration of Marianne Mu. Furthermore, on April 10,  
3 2019 at 7:41 a.m., the Anonymous Defendant tweeted the following statements:

4 “The issue in which article links of Yuuki Yu’s women issues and sexual  
5 relationships are being regulated; Hastag; #Yuuku Yu #Yuichiro Yasuda #Yu  
6 Mental Clinic #Defamation #managed prostitution #sex crime #Engagement scam  
7 #incapacitated rape #sexual scandals # Exchange of Prosecutors and judges  
8 #defamation #managed prostitution #sex crime #intimidation #extortion  
9 #engagement scam #incapacitated rape. (Decl. Kanda ¶6).

10  
11 According to Mr. Kanda, Dr. Yasuda and Yu Mental Clinic’s attorney, the  
12 tweets from the Anonymous Defendants Twitter page are false and were posted for  
13 harassment of Dr. Yasuda and Yu Mental Clinic. (Decl. Kanda ¶ 7).

14 Additionally, according to Mr. Kanda, the Twitter posts constitute defamation,  
15 unlawful business interference and violation of portrait and privacy rights under  
16 Japanese law. (Decl. Kanda ¶ 7).

17  
18 Therefore, Dr. Yasuda and Yu Mental Clinic intend to bring a lawsuit in  
19 Japan against the person(s) associated with the twitter account of the Anonymous  
20 Defendant as soon as the person(s) identity have been ascertained through the  
21 discovery specifically sought in this application. (Decl. Kanda ¶ 8). In order to

1 identify the person(s) who committed the unlawful acts against Dr. Yasuda and Yu  
2 Mental Clinic through the Anonymous Defendant's Twitter Account, it is crucial  
3 for Dr. Yasuda and Yu Mental Clinic to obtain information and documents relating  
4 to the Anonymous Defendant's Twitter account. (Decl. Kanda ¶ 9).  
5

## 6 **II. ARGUMENT**

### 7 **A. Legal Standard**

8  
9 An applicant seeking discovery for use in a foreign proceeding must  
10 demonstrate that (1) the person from who the discovery is sought or is found in this  
11 district, (2) the discovery is for use in a proceeding before a foreign tribunal, and  
12 (3) the application is made by a foreign or internal tribunal or any interested  
13 person. 28 U.S.C. § 1782; *In re The Republic of Ecuador, Case No. C-10-80225*  
14 *MISC CRB (EMC), 2010 U.S. Dist. LEXIS 102158 (N.D. Cal. Sept. 15, 2010) at*  
15 *\*1.*  
16  
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19 In exercising its discretion under 28 U.S.C. § 1782, a district court should  
20 further consider the following non-exhaustive factors: “(1) whether the “person  
21 whom the discovery is sought is a participant in the foreign proceeding”; (2) “the  
22 nature of the foreign tribunal, the character of the proceedings underway abroad,  
23 and the receptivity of the foreign government or the court or agency abroad to U.S.  
24 federal-court judicial assistance”; (3) whether the discovery request is am “attempt  
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1 to circumvent proof gathering restrictions or other policies of a foreign country or  
 2 the United States”; and (4) whether the discovery requested is “unduly intrusive or  
 3 burdensome.” *In re Apple Inc.*, 2012 U.S. Dist. LEXIS 66669, 3-4 (N.D. Cal. May  
 4 2, 2012) (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-  
 5 265 (U.S. 2004)).

8 **B. Dr. Yasuda and Yu Mental Clinic’s Application Meets All of the**  
 9 **Statutory Requirements under 28 U.S.C. § 1782**

11 **1. Twitter, Inc. Whom Discovery Sought is located in this District**

12 Twitter, Inc., from whom the discovery requested in this application is  
 13 sought, is located in San Francisco, California. Therefore, Twitter, Inc. is within  
 14 this Court’s district. (Decl. Kanda ¶10).

17 **2. The Requested Discovery is for Use in a Proceeding in Japan**

18 The discovery requested in this application must be utilized for a  
 19 proceeding before a foreign tribunal. The foreign proceedings need not be  
 20 commenced before 28 U.S.C. § 1782 may be invoked. It is enough that such  
 21 proceedings are “likely to occur” or are “within reasonable contemplation.” *Intel*  
 22 *Corp v. Advanced Micro Devices, Inc.*, *supra* at 258-259 (quoting *In re Letter*  
 23 *Request From Crown Prosecution Service of United Kingdom*, 870 F.2d 686, 691  
 24 (DC Cir. 1989)).



1 Dr. Yasuda and Yu Mental Clinic intend to bring a lawsuit in Japan against  
2 the person(s) associated with the Twitter account in question as soon as the  
3 person's identity has been ascertained through the discovery sought by this  
4 application. (Decl. Kanda ¶ 8). Thus, the requirement that the discovery be for use  
5 in a foreign proceeding is met.  
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8 **3. Dr. Yasuda and Yu Mental Clinic is the Interested Party under 28**

9 **U.S.C § 1782, Whom May Make this Application.**

10  
11 The application to seek discovery pursuant to 28 U.S.C. § 1782 may be  
12 made by any "interested person". As Plaintiffs on the anticipated litigation in  
13 Japan, Dr. Yasuda and Yu Mental Clinic are clearly an interested person under 28  
14 U.S.C. § 1782.  
15

16 **C. Dr. Yasuda and Yu Mental Clinic's Application Further Meets All of**  
17 **the Discretionary Factors under Intel.**  
18

19 **1. Twitter, Inc. is Not a Participant in the Foreign Proceeding**

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21 The first Intel. factor asks whether the "person from whom discovery sought  
22 is a participant in the foreign proceeding." *Intel*, 542 U.S. at 264. If the person is a  
23 participant, "the need for § 1782(a) aid generally is not as apparent as it ordinarily  
24 is when evidence is sought from a non-participant in the matter arising abroad"  
25 because "[a] foreign tribunal has jurisdiction over those appearing before it, and  
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1 can itself order them to produce evidence.” *Id.* “In contrast, nonparticipants in the  
2 foreign proceeding may be outside the foreign tribunal’s jurisdictional reach;  
3 hence, their evidence, available in the United States, may be obtainable absent  
4 §1782 (a) aid.” *Id.*

5  
6  
7 Twitter, Inc. is not a participant in the anticipated Japanese lawsuit. (Decl.  
8 Kanda ¶ 10, ¶13). Additionally, the information that Dr. Yasuda and Yu Mental  
9 Clinic seek are in the United States and not in Japan. Thus, the information sought  
10 is out of Japan’s tribunal reach.  
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13 **2. The Requested Information is Crucial to Dr. Yasuda and Yu**  
14 **Mental Clinic’s Impending Lawsuit in Japan and the Japanese**  
15 **Court’s Would be Receptive to this Court’s Assistance**  
16

17 “A court presented with a § 1782(a) request may take into account the nature  
18 of the foreign tribunal, the character of the proceedings underway abroad, and the  
19 receptivity of the foreign government or the court agency abroad to U.S. federal-  
20 court judicial assistance.” *Intel at 264.*  
21

22 In order to identify the person(s) who committed the unlawful acts against  
23 Dr. Yasuda and Yu Mental Clinic through the Twitter account in question for  
24 purposes of bringing a lawsuit against said person(s) in Japan, it is crucial for Dr.  
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1 Yasuda and Yu Mental Clinic to obtain the information relevant to the Twitter  
2 account of the Anonymous Defendant. (Decl. Kanda ¶ 12).

3  
4 In addition, the Japanese courts would be receptive to this Court's  
5 assistance. In fact, Japanese courts have been receptive to the discovery assistance  
6 made by U.S. Courts. *Marubeni Am. Corp. v. LBA Y.K.*, 335 Fed. Appx. 95, 97-98,  
7 2009 U.S. App. LEXIS 12953, \*7-8 (2d Cir. N.Y. 2009); *In re Application of LG*  
8 *Elecs. Deutschland GMBH*, 2012 U.S. Dist. LEXIS 70570, \*5, 2012 WL 1836283  
9 (S.D. Cal. May 21, 2012).

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11  
12 **3. Dr. Yasuda and Yu Mental Clinic's Discovery Request is Not**  
13 **and Attempt to Circumvent Foreign Proof Restrictions or**  
14 **Policies**

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17 "A district court could consider whether §1782(a) request conceals an  
18 attempt to circumvent foreign proof-gathering restrictions or policies of a foreign  
19 country or the United States." *Intel. at 265*.

20  
21 Dr. Yasuda and Yu Mental Clinic are not aware of any restrictions imposed  
22 by or any policies under Japanese law limiting proof-gathering proceeding in the  
23 manner proposed or for the purposes stated herein. (Decl. Kanda ¶11). In the past,  
24 Courts have granted 28 U.S.C. § 1782 applications for use in the proceedings in  
25 Japan, both criminal and civil cases. *Marbueni Am. Corp. at 98*; *LG Elecs*  
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1 *Deutschland GMBH*, \*5; *Okubo v. Reynolds (In re Letters Rogatory from the*  
2 *Tokyo Dist. Prosecutors Office)*, 16 F.3d 1016, 1018-1019, 1994 U.S. App. LEXIS  
3 2440, \*3-6, 94 Cal. Daily Op. Service 1108, 94 Daily Journal DAR 1918, 28 Fed.  
4 *R. Serv. 3d (Callaghan) 200 (9<sup>th</sup> Cir. Cal. 1994).*

7 **4. Dr. Yasuda and Yu Mental Clinic's Request is narrowly tailored**  
8 **to Highly Relevant Information for the Japanese Civil Case and**  
9 **Not Unduly Intrusive or Burdensome**

11 "Unduly intrusive or burdensome requests may be rejected or trimmed."  
12 *Intel at 265.* As shown in the proposed subpoena to Twitter, Inc. attached to the  
13 proposed Order submitted with this Application, the discovery requests by  
14 Applicants is narrowly tailored and limited to the discovery materials related to the  
15 subject Twitter account of the Anonymous Defendant through which the identity of  
16 the defendant to the impending Japanese lawsuit can be ascertained, and no further  
17 information is required.

21 Access logs of the Twitter account is highly relevant. Since the offending  
22 comments tweeted on the Twitter account of the Anonymous Defendant were done  
23 recently, on January 26, 2019 and April 10, 2019; this information is highly  
24 relevant and necessary for Applicants to file the impending lawsuit in Japan  
25 against the Anonymous Defendant. It is not burdensome for Twitter, Inc. to  
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1 provide the access logs of the Anonymous Defendant, since the offending  
2 comments were posted to Twitter on January 26, 2019 and April 10, 2019,  
3 respectively.  
4

5 **III. CONCLUSION**  
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7 For the reasons stated above, Dr. Yasuda and Yu Mental Clinic respectfully  
8 requests that this Court grant this application and permit that it issue the subpoena  
9 to Twitter, Inc. attached to the proposed order submitted within this application.  
10

11  
12 Respectfully Submitted,

13 DATED: June 11, 2019  
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AZIMY LAW, APC

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17 Elham Azimy, Esq.  
18 Attorney for Applicants, Dr Yasuda and  
19 Yu Mental Clinic  
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